

NO. 26-5086

IN THE
SUPREME COURT OF THE UNITED STATES

MACKENZIE BECKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit

PETITIONER'S REPLY BRIEF

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Argument

Mr. Becker's petition asks whether a search warrant's supporting affidavit can establish probable cause to search a suspect's home for a firearm used in a crime based solely on the inference that firearms are generally kept at home, or whether the Fourth Amendment instead requires case-specific facts linking the weapon sought to the residence to be searched. This question has deeply divided the courts of appeals, with the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits accepting the generic inference alone and the First and Fifth Circuits demanding more. The decision below and the Fifth Circuit's decision in *United States v. Wilson*, 153 F.4th 478 (5th Cir. 2025), reach opposite results on materially indistinguishable facts, cleanly illustrating the conflict. And given how frequently firearms offenses are prosecuted in the state and federal systems, this question is one that courts will likely confront again and again.

The government offers three reasons to deny review. First, it seeks to reduce the question presented and the decision below to a dispute about whether this particular affidavit established probable cause to search the target residence. Second, it downplays the deep divide among the courts of appeals by recasting decisions from the First and Fifth Circuits as bound to their facts. Finally, it contends that this case is a poor vehicle for addressing the probable-cause question because the good-faith exception to the exclusionary rule would independently sustain the denial of suppression.

None of these objections withstands scrutiny. This Court should grant review.

I. The question presented is not fact-bound, because the decision below rests on a categorical rule.

The government’s principal response is to reduce both Mr. Becker’s petition and the decision below to a dispute over the sufficiency of this particular affidavit. It rewrites the question presented to ask only whether “the affidavit submitted in support of the warrant to search [Mr. Becker]’s residence established probable cause to believe that firearms would be found in that residence,” Br. in Opp’n at (I); recasts Mr. Becker’s petition as requesting that this Court correct the Tenth Circuit’s “fact-bound” nexus finding, *id.* at 7; and argues that the nexus determination is “bolstered” by two features of this record—the presence of Mr. Becker’s car at the Iliff Lane house and his felony record—on which the Tenth Circuit did not rely in concluding that the affidavit established a sufficient connection between the gun and the house, *id.* at 10-11.

But the question presented here is not fact-bound, because the decision below was not. The Tenth Circuit did not hold that this affidavit happened to contain enough case-specific facts to tie the gun sought to the Iliff Lane house. It held that no such facts were needed, because firearms belong to a “special class” of evidence for which the gap between crime and home “can be filled merely on the basis of the affiant-officer’s experience.” App. A13 (quotations omitted). The court said so expressly, and the Tenth Circuit has since cited the decision for exactly that proposition. *See, e.g., United States v. Holt*, 173 F.4th 1335, 1341-42 (10th Cir. 2026) (citing *Becker* for proposition that

nexus requirement can be satisfied in gun cases by officer's observation that firearms are the type of evidence likely to be kept at a suspect's residence).

The opinion's structure demonstrates that the court's nexus finding rested on that categorical rule. The court summarized its holding at the outset: the affidavit tied Mr. Becker to the house, and "one could infer that [he] would keep the firearm at his residence." App. A2. In explaining why the affidavit supplied the requisite "additional evidence linking the person's home to the suspected criminal activity," *id.* at A9-A10 (quotation omitted), the court pointed only to the proposition that "law-enforcement experience, precedent, and common sense strongly support an inference that the firearm would be kept at the user's residence," as reflected in the affiant's assertion that "[a] firearm is not normally disposed of after the commission of a crime." *Id.* at A10-A11. By its terms, that statement concerns firearms users generally; it was not tailored to Mr. Becker's circumstances or even to the type of crime under investigation. *Id.* The court then left no doubt about the rule's reach, holding that firearms belong in the "special class" of evidence where the court has not "required particular facts to support the inference" that the evidence is kept at home, allowing the affiant's experience alone to fill the gap. *Id.* at A13 (quoting *United States v. Mora*, 989 F.3d 794, 801 (10th Cir. 2021)). The government's brief does not acknowledge this holding.

The two facts the government now emphasizes (at 10-11), namely, the presence of Mr. Becker's car at the Iliff Lane house and his felon status, do not limit the opinion's

scope. To begin, the Tenth Circuit invoked these facts only to explain why the three-week gap between the alleged road-rage incident and the issuance of the warrant did not “*defeat* the inference” that the firearm sought would be at the Iliff Lane house, not to justify that inference in the first place. App. A11-A12 (emphasis added).

And even were these facts part of the court’s nexus holding, they would not narrow its rule. Whether Mr. Becker’s car is properly considered an “instrumentality” of the crime, *see* Br. in Opp’n at 11 (quoting App. A12), it is fundamentally just his means of transportation—the car’s presence at the Iliff Lane house two weeks after the road-rage incident says nothing more than what Mr. Becker’s own presence already showed: that he sometimes traveled to that location. Indeed, it was the very evidence the court relied on to conclude that he lived there. App. A8. Counting the car’s presence again as the link between the gun and the house collapses the residence inquiry into the nexus inquiry. As for Mr. Becker’s felony record, the court reasoned that he would be unlikely to dispose of the gun because his criminal history would make a replacement “that much more difficult to acquire.” *Id.* at A12. Even assuming this inference is sound, at most it suggests that Mr. Becker kept the gun; it says nothing about *where* he kept it, and certainly does not supply probable cause to believe he kept it at the Iliff Lane house.

The decision below thus did not turn on the particulars of this affidavit. It rests on the categorical rule that the generic inference that firearms are kept at home suffices,

without case-specific facts, to establish a probable-cause nexus to a suspect's residence—precisely the rule the question presented asks this Court to review.

II. The government downplays the deep split between the circuits.

Next, the government downplays (at 11-13) the split between the circuits, accusing Mr. Becker of “overstat[ing] the level of any disagreement.”

But the courts of appeals are deeply divided over whether the use of a gun in the commission of a crime can, by itself, give rise to probable cause to search a suspect's home or whether the Fourth Amendment instead requires case-specific facts tying the weapon sought to the home to be searched in order for a warrant to issue, with the Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits taking the former position¹ and the First and Fifth Circuits taking the latter. *See* Pet. at 8-14. Indeed, the Tenth Circuit itself acknowledged the circuits' divergent approaches. App. A11-A12 & n.1.

To align the circuits, the government must narrow both sides of the split. Having recast the Tenth Circuit's categorical holding as a fact-bound one, it now attempts to do the same (at 12-13) with *United States v. Charest*, 602 F.2d 1015 (1st Cir. 1979), and *United States v. Wilson*, 153 F.4th 478 (5th Cir. 2025). But the Tenth Circuit did not view

¹ Although the government places the Third Circuit in this category, *see* Br. in Opp'n at 12 (citing *United States v. Jones*, 994 F.2d 1051, 1056 (3d Cir. 1993)), that appellate court has yet to address “whether in every case the fact that a suspect committed a crime involving cash and/or a gun automatically provides a magistrate with enough information to approve a search of a suspect's home,” expressly declining to reach the question in *United States v. Jones*, 994 F.2d at 1056-57.

these decisions as reconcilable with its own: it cited *Charest* as contrary authority, App. A11, and declined to follow *Wilson* because it was “inconsistent with [Tenth Circuit] precedents,” App. A12 n.1.

Indeed, the government’s own account of *Charest* concedes the conflict. As the government acknowledges (at 12-13), the First Circuit “rejected an automatic inference” that a shooter would keep his weapon at home. That is the very inference the Tenth Circuit deemed sufficient on its own to create a probable-cause nexus, placing firearms in the “special class” of evidence for which it has “not required particular facts to support the inference” that the evidence sought would be kept at the suspect’s residence. App. A13. That *Charest* did not announce a bright-line rule *forbidding* the inference in all circumstances is beside the point; the Tenth Circuit’s rule permits the inference to stand alone, whereas *Charest* requires more. *See* 602 F.2d at 1016-18. And applying *Charest*’s approach here would have required the opposite result: the First Circuit found the home-storage inference especially implausible given the 16-day gap between the commission of the shooting under investigation and the issuance of the warrant, a shorter period than the one here, reasoning that “[i]t is contrary to common sense and logic to expect a murderer to keep the murder weapon in his own premises for almost three weeks.” *Id.* at 1018.

Notwithstanding the government’s efforts to recharacterize it, *Wilson* likewise conflicts with the decision below. There, the Fifth Circuit held that the general inference

that people keep firearms at home cannot by itself establish the required probable-cause nexus; an affidavit must instead supply “facts suggesting” that the weapon sought “made its way to” the residence to be searched and would “still be there” when the warrant was executed. 153 F.4th at 486. That rule cannot be reconciled with the Tenth Circuit’s, which places firearms in a “special class” of evidence that, by its nature, is “likely to be kept in a suspect’s residence” and “remain there”—an inference that is supplied categorically, “merely on the basis of the affiant-officer’s experience” that individuals ordinarily store their weapons at home. App. A13 (quotations omitted); *see also id.* at A10. The government’s principal distinction—that the affiant here averred that “[a] firearm is not normally disposed of after the commission of a crime,” App. A4—is precisely the sort of generality *Wilson* held insufficient to “tether such an inference to the particular circumstances of the case.” 153 F.4th at 486. Assuming it is even sound, *but see Charest*, 602 F.2d at 1017; *Wilson*, 153 F.4th at 486-87, such boilerplate would apply in every case involving a gun, so, by definition, it cannot tie a particular weapon to a particular home. And as explained, *supra* at 3-4, the other facts the government invokes were not the basis of the Tenth Circuit’s nexus holding and would not supply the tether *Wilson* requires in any event (indeed, the affidavit in *Wilson*, too, placed the suspect’s car at the residence, 153 F.4th at 482-83, 485-89 & n.36).

In sum, the courts of appeals are divided over whether the generic inference that people keep firearms at home can, by itself, supply probable cause to search a suspect’s

residence, and this case would have come out differently under the approach used in the First and Fifth Circuits.

III. The possible future application of the good-faith exception does not render this case an unsuitable vehicle to address the question presented.

Finally, the government contends (at 13-16) that this case is an unsuitable vehicle for addressing the question presented because even if the warrant lacked probable cause, the good-faith exception to the exclusionary rule would apply to save the search. Consequently, the government argues, a favorable decision by this Court on the probable-cause issue would have no practical effect on Mr. Becker's case, and this Court does not decide such abstract legal questions that would not affect the parties' rights.

The government is wrong. First, the good-faith question is not properly before this Court because the Tenth Circuit expressly declined to reach it. *See* App. A14. Indeed, the government relies (at 14) not on anything in the Tenth Circuit's opinion but the district court's passing observation that it "would have found that the good faith exception applied anyway" because, "[b]ased on what was in the affidavit and the judge's approval of that, . . . it would have been entirely reasonable for the detective to rely on that and execute the warrant." App. A51. But as this Court has "said many times before," it is "a court of review, not of first view." *Chatrue v. United States*, 609 U.S. 605, 641 (2026) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). If the Court resolves the probable-cause question in Mr. Becker's favor, the good-faith question will remain for the Tenth Circuit to decide in the first instance. *Id.* at 619 n.4, 641.

Second, the possible future application of the good-faith exception would not make this case a poor vehicle even if the Tenth Circuit had decided the issue against Mr. Becker, or even if the “odds [we]re strong” that it would do so on remand. *Chatrue*, 609 U.S. at 619 n.4. Courts “should feel free” to resolve substantive Fourth Amendment questions before turning to good faith, “either to better assess good faith or ‘to guide future action by law enforcement officers and magistrates.’” *Id.* (alteration omitted) (quoting *United States v. Leon*, 468 U.S. 897, 925 (1984)). And because this Court’s resolution of the probable-cause question would bear directly on the good-faith inquiry, on remand, the Tenth Circuit would need to consider the good-faith issue “anew, gleaning anything it thinks relevant from [this Court’s] decision on the substantive Fourth Amendment issue[.]” *Id.* at 619 n.4, 641.

In any event, the government’s premise is wrong: the application of the good-faith exception here is not a foregone conclusion. The government contends (at 15-16) that a reasonable officer would have relied on the warrant’s validity in light of *United States v. Rahn*, 511 F.2d 290, 293 (10th Cir. 1975), which upheld a warrant to search a suspect’s home for firearms even though the affidavit did not contain evidence that anyone had observed the guns there, and *United States v. Shomo*, 786 F.2d 981, 984 (10th Cir. 1986), which relied on *Rahn* to uphold a warrant to search a suspect’s residence for a revolver ten days after he was seen with it. But in both cases, the warrant’s supporting affidavit presented case-specific facts indicating that the suspects kept the firearms at

their homes. In *Rahn*, an ATF agent was suspected of stealing firearms that had been seized by the agency; told his co-conspirator that he intended to hold the guns for “several years” while they appreciated in value; had appropriated at least one for personal use; and could not keep the firearms at his office—making his home a likely storage site. 511 F.2d at 293-94. And in *Shomo*, the suspect was seen leaving his home carrying the revolver. 786 F.2d at 984. The affidavit here contained no comparable facts tying the firearm to the Iliff Lane house.

In short, the good-faith exception to the exclusionary rule does not render this case an improper vehicle for resolving the probable-cause question presented here.

Conclusion

The petition should be granted.

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